

From: [Lisa C. Kunz](#)
To: [Greg Doyon](#); [Charles Anderson](#); [Krista Artis](#); [Darcy Dea](#); [Brock Cherry](#); [Lonnie Hill](#); [Cory Reeves](#); [Joe McKenney](#); [Rick Tryon](#); [Shannon Wilson](#); [Susan Wolff](#)
Subject: FW: [All City Commissioners] 805 2nd st sw bay view apartments
Date: Tuesday, March 5, 2024 8:09:51 AM

Written comments for consideration of agenda item 20 this evening.

Lisa

From: Lisa C. Kunz
Sent: Tuesday, March 5, 2024 8:09 AM
To: 'Jane Brinkman' <gijane107@gmail.com>
Subject: RE: [All City Commissioners] 805 2nd st sw bay view apartments

Good Morning Jane – your update to M2 will be shared with the commission and appropriate staff for this agenda item this evening.

Lisa Kunz

City Clerk/Records Manager
Civic Center Room 204
406.455.8451

From: Jane Brinkman <gijane107@gmail.com>
Sent: Tuesday, March 5, 2024 5:33 AM
To: Lisa C. Kunz <lkunz@greatfallsmt.net>
Subject: Re: [All City Commissioners] 805 2nd st sw bay view apartments

Thank you! Will you change the M1 to M2? Please...

On Mon, Mar 4, 2024 at 2:02 PM Lisa C. Kunz <lkunz@greatfallsmt.net> wrote:

Hi Jane – thank you for your written comments and follow up voice mail. Your comments were shared with members of the Commission for consideration of Agenda Item 20 tomorrow evening, and will be so noted in the official minutes of the meeting.

Best regards,

Lisa Kunz

City Clerk/Records Manager
Civic Center Room 204
406.455.8451

From: City of Great Falls Montana <greatfalls-mt@municodeweb.com>
Sent: Monday, March 4, 2024 1:51 PM

To: City Commissioners <CityCommissioners@greatfallsmt.net>

Subject: [All City Commissioners] 805 2nd st sw bay view apartments

Jane Brinkman (gijane107@gmail.com) sent a message using the contact form at <https://greatfallsmt.net/>.

Word on the street that this zone change is already a done deal. There are meetings tomorrow night that I won't be able to attend. Do not allow this spot zoning to happen . There is a home on the corner and numerous homes across the street and down the Avenue. There isn't enough space for this size of a project and the city said there wouldn't be any infrastructure improvements. We have numerous Rivers Edge Trail people using this part for access and it's a bike route. We have CMR kids frequently running. There's no overflow parking available. We have no sidewalks and 10th Ave SW road isn't even in the right area. It's 10 feet off and the city said they weren't going to fix it at the last meeting. This spot zoning is being challenged in this state An M1 down the road means they could build anything. This is an older residential neighborhood that doesn't need this massive of a project built here.. please keep our R1. We all pay taxes here, unlike renters! Thank you

City of Great Falls e-mails may be subject to Montana's Right To Know law (Article II Sec 9, Montana Constitution) and may be a Public Record (2-6-1002, M.C.A.) and available for public inspection.

March 4, 2024

Dear City Commission of the City of Great Falls,

I am a resident of the City of Great Falls. I am writing to provide public comment on Agenda Item 20 (Ordinance 3264, rezoning of 805 2nd Street SW) of the planned City Commission meeting to be held on March 5, 2024.

The City of Great Falls Illegal Spot Zoning Legal Analysis is Flawed

The City of Great Falls planning staff cites the Supreme Court of Montana 2021 opinion in *Hartshorne v. City of Whitefish* in their analysis that the rezoning of 805 2nd Street SW from R-1 Single-family Suburban to M-2 Mixed-use Transitional does not constitute illegal spot zoning. The city's analysis is flawed and leaves the City of Great Falls open to a legal challenge. A legal challenge that the approval of the Bay View Apartments zoning request constitutes illegal spot zoning by the City Commission.

In short, the circumstances of Whitefish's zoning change are not sufficiently similar to the circumstances in Great Falls's proposed zoning change for *Hartshorne v. City of Whitefish* to be used to support Great Falls's proposed zoning decision.

The City of Whitefish's Zoning Action was Years in the Making and Specific to a 2.5 Acre Parcel

At issue in *Hartshorne v. City of Whitefish* is whether or not the City performed illegal spot zoning in the adoption of Ordinance 18-23. The case concerns the Riverside at Whitefish neighborhood center, a 2.5 acre parcel of land. Plans for the neighborhood center had been explicitly identified as commercial in nature since the neighborhood plan was adopted by the City of Whitefish in 1993, and amended in 1999. From page 4 of the Montana Supreme Court opinion (also page 145 of the Great Falls City Commission meeting agenda packet ("the agenda packet")):

"The 1999 Neighborhood Plan "embodies the public policy for the area it addresses." It provides that "[a]ny land use ordinances or regulations, such as zoning or subdivision review, shall be based on this plan[.]""

"A 2.5 acre neighborhood center to meet the demand for basic services created by the walking community and youth athletic facility. The site will be developed under the auspices of a mixed PUD whereby 10% of the gross area of the site can be developed in commercial uses intended to be complimentary to the proposed development of the neighborhood"

Suit was brought by James Hartshorne and Angelo Queirolo in 2018, 25 years after the adoption of the neighborhood plan, and 19 years after the adoption of the amended neighborhood plan. Suit was

brought because the City of Whitefish adopted Ordinance 18-23 that amended the zoning map and allowed the commercial development of the neighborhood center parcel through a conditional use permit (CUP) and supporting city ordinance change, instead of a planned unit development (PUD).

Because the neighborhood plan that contemplated commercial use of the neighborhood center was in place well before the adoption of Ordinance 18-23 that enabled commercial use of the neighborhood center, the Supreme Court of Montana ruled correctly that the City of Whitefish did not engage in illegal spot zoning as outlined in Montana's three-part test:

1. The proposed use is significantly different from the prevailing use in the area.
2. The land area is small from the perspective of the number of separate benefitted land owners from the proposed change.
3. The zoning change is designed to only benefit one or a few land owners.

Importantly, the court evaluated parts two and three together and arrived at the opinion:

“Ordinance 18-23’s permitted commercial uses thus were compatible with the Neighborhood Plan, weighing heavily against satisfaction of the second and third elements.”

Essentially, the zoning action that the City of Whitefish undertook in 2018 was not illegal spot zoning because the neighborhood plan envisioned the commercial use of the land as a public benefit 18 to 25 years earlier. The neighborhood plan explicitly acknowledged and provided for the future commercial development of the neighborhood center. The city’s zoning action merely affirmed the commercial use of a property that had been planned for years.

The City of Great Falls’ Proposed Rezoning is Dissimilar to the Whitefish Rezoning, and Therefore *Hartshorne v. City of Whitefish* Does Not Apply to Rezoning the Bay View Apartments Parcel

The zoning action before the City of Great Falls Commissioners does not fit the fact pattern found in *Hartshorne v. City of Whitefish*.

The land covered by the Bay View Apartments zoning request is currently zoned single family residential. It has had a non-conforming use as a mobile home park and is now vacant. No city, county, or state document exists that explicitly identifies the use of the 4.46 acre parcel as anything except residential. This was not the circumstance in Whitefish—the decades old plan in Whitefish clearly identified a small parcel of land to be developed commercially, and they knew a PUD (later implemented as a CUP coupled with an ordinance change) would be needed to support the plan.

The 2013 Growth Policy Update and Missouri River Urban Corridor Plan cited as support by the City of Great Falls planning department only covers the generalized expected benefits of land use changes. They do not call out the Bay View Apartments land parcel specifically, nor do they call out the Garden Home Tracts neighborhood it is a part of. Further, there is no neighborhood plan specific to the area—it is old and well established. I believe no neighborhood plan exists because the residents felt no plan was needed for the fully developed neighborhood. That was not the circumstance in Whitefish—that was a

pre-planned development with a neighborhood plan and city plan that explicitly called out the uses and expected changes necessary to implement the plan.

Conclusion: The City of Great Falls will Arguably be Illegally Spot Zoning the Bay View Apartments Parcel

In one singular act, the City Commission will replan the use of the parcel and enable its redevelopment to benefit the parcel's land owners/developers at the expense of the surrounding neighborhood.

The city-provided background in the agenda packet page 114 is very clear: "The applicant's rezoning request is to facilitate the sale of the property to developers..." The city knows the owners want to rezone to make a land sale, and are asking for the Commission's assistance in making that sale.

If this zoning request is approved, the City Commission will be on record with the intent to make a zoning change that arguably meets all three illegal spot zoning tests provided by the Supreme Court of Montana in *Little v. Board of County Commissioners*. The subject zoning change request:

1. Is significantly different than the surrounding area: *there are only parks and open space, single family residential, and many-decades-old commercial development (that predates city's growth policy and river corridor plan) in the nearby area;*
2. Rezones a small land area that directly benefits only the current land owners and future developers: *the surrounding residents have been clear and consistent in their disapproval of the rezone request, as evidenced by the formal protest and dozens of pages of public comment found at the end of the agenda packet;*
3. Is specifically designed to benefit the current land owners: *clearly stated in the city-provided zoning request background—the rezone request is to facilitate the sale of the property.*

A Respectful Recommendation to the City Commission of the City of Great Falls

Do not accept Ordinance 3264 and associated rezoning request. Combined with the analysis above, a reasonable basis for the Commission's disapproval can be found in Great Falls's 2013 Growth Policy Update. Section 4.2 on page 164 of the update provides zoning guidance for the physical realm. Specifically, section 4.2.8 states "The City may recommend against spot zoning."

Respectfully,
Nicholas Sudan

To the City Commission

We the undersigned members of Neighborhood Council 2 wish to be on record that we voted unanimously 5/0 to recommend to the City Commission **not to approve** the zoning change from the current R-1 zoning along 2nd St SW and Bay Drive to a M-2 zoning to allow for the Bay View Apartment Project.

This is a result of our Feb 14, 2024 NHC 2 meeting, as well as our meeting that occurred in November 2023, when the main topic of discussion was the proposed zoning change.

We understand that you are taking up the topic during the March 5th Commission meeting, we therefore humbly ask that you please take the time to thoroughly examine the numerous concerns from the citizens living in the area and to vote no against approving the zoning change.

Some of the points of concern include but are not limited to:

- Increase Traffic
- The lack of a comprehensive traffic study
- There are no sidewalks in the area
- The boulevard is narrow
- The impact of safety on those living in the area along with those people who utilize the Rivers Edge Trail due to increased traffic
- The lack of adequate parking
 - 1.5 spaces for a 42 and 32 unit complex and 14 townhouses
 - Increase use of on street parking creating additional hazards
- The increase in noise
- This proposed change will dramatically alter the landscape of this quiet neighborhood
- The possible negative impact to property values
 - A request was made to have a property value impact study completed but was not done
- Potential lack of water supply due to increase demand

- Concern for adequate drainage
- Potential increase in crime
 - Data presented in favor of this not happening can easily be refuted with many other studies where increase in population density has been linked to increased crime
- Claim of Apartment Shortages
 - There is a lack of evidence that there is an apartment shortage
 - There are numerous apartments available throughout Great Falls
 - Any future increase with contractors and personnel with the Sentinel Program will have housing provided for them
 - As a matter of fact, according to the town hall meeting concerning the Sentinel Project, it was noted that we will lose some members of the military when this project is completed
 - Here, we are talking about responsible growth
- Even if there is an influx of population, this neighborhood is not suited for this kind of large complex
- There are other areas around Great Falls that would be better suited for this type of endeavor.
- Concerns of different land use after rezoning:
 - While the engineering company has added additional land use restrictions
 - There are no airtight guarantees that other construction that would be unfavorable to this neighborhood could not be included later

NOTE:

- During both the November and February NHC 2 meetings, the citizens present were overwhelmingly opposed to the proposed zoning change.
- There were 100 signed letters with phone numbers and addresses from the citizens living in this neighborhood who vehemently oppose the zoning change.


This zoning change would not be a win for the people who live in this neighborhood and who have lived here for many, many years.

Hopefully they can continue to do so peacefully without a drastic negative impact to their lives.

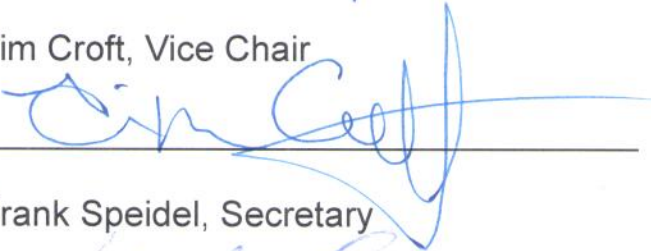
NHC 2 thanks you for taking the requisite time to look deeply into this matter, and to gather all of the facts, and then vote no against the rezoning change recommendation.

Respectfully submitted,


Shyla Patera, Chair



Tim Croft, Vice Chair



Frank Speidel, Secretary



Pam Wagner



Wayne Young



From: [Lisa C. Kunz](#)
To: [Greg Doyon](#); [Charles Anderson](#); [Krista Artis](#); [Darcy Dea](#); [Brock Cherry](#); [Lonnie Hill](#); [Cory Reeves](#); [Joe McKenney](#); [Rick Tryon](#); [Shannon Wilson](#); [Susan Wolff](#)
Subject: FW: comment for 3/5 city commission meeting, Agenda Item 20
Date: Tuesday, March 5, 2024 8:05:51 AM

Written comments for consideration of agenda item 20.

Lisa

-----Original Message-----

From: Lisa C. Kunz
Sent: Tuesday, March 5, 2024 8:05 AM
To: 'Terry Bjork' <tlbjork@hotmail.com>
Subject: RE: comment for 3/5 city commission meeting, Agenda Item 20

Good Morning Terry – thank you for submitting public comment. Your comments will be shared with the Commission and appropriate staff for consideration of agenda item 20 this evening.

Best regards,

Lisa Kunz
City Clerk/Records Manager
Civic Center Room 204
406.455.8451

-----Original Message-----

From: Terry Bjork <tlbjork@hotmail.com>
Sent: Monday, March 4, 2024 8:23 PM
To: commission <commission@greatfallsmt.net>
Subject: comment for 3/5 city commission meeting, Agenda Item 20

Commissioners

This comment is in regard to Agenda Item 20 of the 3/5 regular meeting, ordinance 3264, about the rezoning over by Garden Home Park.

It is kind of difficult to see on page 197 of the packet, Appendix B "Site Plan and Site Renderings", but it looks like this project proposes to put a detention pond on the south end of the public park. Not on their own property but public property. Where currently there is a nice stand of mature trees.

There's nothing else about the detention pond plan in the written materials for this ordinance. I would urge someone to inquire about that. And if using public park property is indeed the plan, I am opposed to that.

Also unclear in the materials is the proposed "boundary line adjustment". It is mentioned once but not explained, and appears on that same Appendix B rendering but it's nigh impossible to tell exactly what is proposed. If that is giving away public park land, I'm against that too.

Thanks for your consideration,

Terry Bjork

Great Falls